IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4399 OF 2005
WITH
WRIT PETITION NOS.4400 & 4413 OF 2005

Shri P. A. Inamdar & Ors. ...Petitioner.

Versus

State of Maharashtra & Ors. ...Respondents.

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Mr. Riyaz Chagla with Mr. Anilkumar Joshi for the Petitioners.
Mr. A. A. Kumbhakoni, Associate Advocate General with Mr. Y. D. Mulani, AGP for the Respondent.

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CORAM : A. P. SHAH AND
DR. D.Y. CHANDRACHUD, JJ.

July 13, 2005.

ORAL JUDGMENT (PER DR.D. Y. CHANDRACHUD, J.).:

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. In this batch of petitions, a decision arrived at by the

Pravesh Niyantran Samiti on 10th June 2005 of declining to enhance the management quota for admissions at professional institutions established and administered by minorities, from 50% to 100% of the total intake has been called into question. The Samiti was set up by the Government of Maharashtra in pursuance of the decision of the Supreme Court in **Islamic Academy of Education vs. State of Karnataka,** (2003) 6 SCC 697. The three institutions in question in the three petitions before the Court, provide instruction in Architecture, Pharmacy and Management Sciences. None of the institutions is in receipt of grant-in-aid from the State Government or the Central Government. There is no dispute before the Court about the position that these three institutions have been established and are being administered by a religious minority consisting of persons who practice and profess Islam.

3. The judgment of the Supreme Court in **T. M. A. Pai Foundation vs. State of Karnataka,** (2002) 8 SCC 481 was delivered on 31st October 2002. The Constitution Bench of the Supreme Court delivered judgment in **Islamic Academy of Education Vs. State of**

Karnataka, (2003) 6 SCC 697 on 14th August 2003. On 16th February 2004, the Government of Maharashtra issued a resolution by which the management quota for all minority run educational institutions in the State was fixed at 50%.

4. Upon the constitution of the Samiti, the Petitioners filed appeals in order to press their claim for the enhancement of the management quota to cover all the admissions at these institutions. On 19th August 2004, the Samiti maintained the quota for the Academic Year 2004-05 since the admissions process had reached an advanced stage, reserving liberty to the institutions to apply for an enhancement of the quota during the next Academic Year. Accordingly, appeals were filed on 30th November 2004 in order to challenge the Government Resolution of 16th February 2004. On 19th March 2005, the Samiti rejected appeals filed by the Institutions and reiterated that the management quota for the Academic Year 2005-06 shall continue to remain at 50%. The Samiti was of the view that since the issue was pending before a Bench of seven Learned Judges of the Supreme Court, it should not intervene at that stage.

Subsequently, on 25th April 2005, the Samiti decided to have a fresh look at the management quota for minority institutions and allowed the institutions to submit data regarding (i) the number of seats or the strength of admissions during the previous two years; (ii) the number of applications received; (iii) the number of admissions granted; (iv) allotment of students received from the Government; and (v) information in respect of local needs. The Petitioners thereupon submitted by a letter dated 27th April 2005, data reflecting the seats which were filled up against the management quota during the Academic Years 2003-04 and 2004-05, the names of candidates who had applied for admissions and the candidates who could not be eventually admitted. This data was submitted to the Samiti in support of the contention of the Petitioners that the management quota was inadequate to meet the needs and requirements of these minority institutions and the religious minorities concerned. By a decision arrived at on 10th June 2005, the Samiti declined to revise the quota and maintained the management quota at 50% for minority institutions.

5. The submission which has been urged in support of these petitions is that the Samiti has furnished no reason whatsoever for declining to accede to the request made by the managements for the enhancement of the management quota. It has been submitted that though data was produced by all the three institutions, demonstrating that the quota which had been allowed was inadequate to meet the needs of the institutions and of the Muslim minorities, leaving out in the process a number of unaccepted applicants, the Committee has not applied its mind to the data produced before it on the record. Moreover, it was urged that the committee has not had regard to the principles which were laid down by the Supreme Court in its decisions in **T. M. A. Pai Foundation** (supra) and in **Islamic Academy of Education** (supra).

6. In **T. M. A. Pai Foundation Vs. State of Karnataka**, (supra) the Supreme Court held that unaided professional institutions are entitled to autonomy in their administration but, at the same time, they must not forgo or discard the principle of merit. The Supreme Court held that it was open to the University or Government while granting

recognition to require a private unaided institution to provide for merit-based selection while giving the management a sufficient discretion in admitting students. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the Common Entrance Test held by itself or by the State or University and have applied to the college concerned for admission while the rest of the seats may be filled up on the basis of counseling by the State agency. The Court held that the prescription of percentage for this purpose has to be done by Government according to local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. In the concluding part of the judgment of the majority delivered by the Hon'ble the Chief Justice, Mr.Justice B.N. Kirpal, one of the questions that was framed for determination was thus:

> "Q.4. Whether the admission of students to minority educational institution, whether aided or unaided can be regulated by the State Government or by the university to which the institution is affiliated?"

While deciding upon this issue, the Supreme Court held that the right to admit students being an essential facet of the right of religious and linguistic minorities to administer educational institutions of their choice under Article 30 of the Constitution, the State Government or the University may not be entitled to interfere with that right so long as admissions to unaided educational institutions are on a transparent basis and merit is adequately taken care of. The Supreme Court held that even an aided minority institution does not cease to be a minority institution upon the receipt of aid and it would be entitled to admit students belonging to its own minority while at the same time being required to admit a reasonable extent of non-minority students. What would constitute a reasonable extent would vary, having regard to the type of the institution, the course of education for which admission is sought and other factors like educational needs.

7. The judgment of the Supreme Court in T. M. A. Pai Foundation was thereafter, considered in the subsequent decision of the Constitution Bench in **Islamic Academy of Education Vs. State**

of Karnataka, (2003) 6 SCC 697. The Supreme Court held that the observation in para 68 of the majority judgment in **T. M. A. Pai Foundation** made it clear that the same yardstick cannot be applied to minority and non-minority professional colleges. The Court noted that in the case of non-minority professional colleges, a "certain percentage of seats" can be reserved for admission by the management. However, in the case of minority run professional institutions, the expression "different percentage" had been used. The two expressions did not have the same connotation. The Supreme Court held thus:

> "The expression "different percentage for minority professional institutions" carries a different meaning than the expression "certain percentage for unaided professional colleges". In fixing the percentage for unaided minority professional colleges the State must keep in mind, apart from local needs, the interest/need of that community in the State. The need of that community, in the State, would be paramount vis-a-vis the local needs. (emphasis supplied).

8. The attention of the Court has also been drawn to a subsequent order of the Supreme Court dated 15th July 2004 in **P.A. Inamdar and others vs. State of Maharashtra and others** (SLP (Civil) No.9932 of 2004 and connected matters). A Bench of the Supreme Court consisting of Mrs.Justice Ruma Paul and Mr.Justice Arun Kumar has observed that prima facie, the phrase "their need" in the decision in Islamic Academy referred to the need of the institutions and not of the State.

9. We have adverted to these binding principles which have been laid down by the Supreme Court since, it is on the basis of these principles that the prescription of the management quota must be arrived at by the Pravesh Niyantran Samiti. The Samiti has been set up in pursuance of the directions issued by the Supreme Court in para 19 of its decision in **Islamic Academy of Education**. Para 19 of the judgment contains the following observations which must govern the decision making process of the Samiti:

"It is clarified that different percentage of quota for students

> to be admitted by the management in each minority or non-minority unaided professional college(s) shall be separately fixed on the basis of their need by the respective State Governments and in case of any dispute as regards fixation of percentage of quota, it will be open o the management to approach the Committee."

10. There is merit in the submission which has been urged on behalf of the Petitioners that the Samiti having not furnished any indication of reasons in its decision should be requested to reconsider its decision in the light of the principles of law which have been laid down by the Supreme Court. Each of the institutions before the Court has submitted data in support of its application for enhancement of the percentage in the management quota. This data will have to be considered by the Samiti in the light of the principles enunciated by the Supreme Court. We, therefore, request the Samiti to reconsider the matter and in order to facilitate a fresh determination, we set aside the impugned decision dated 10th June 2005. Having regard to the urgency of the matter, we request the Samiti to expedite its decision.

Since admissions have to be completed at an early date, the Samiti is requested to render its decision by 19th July 2005. In the meantime, having regard to the fact that the Supreme Court has on 15th July 2004 in its order passed in **P.A. Inamdar and others vs. State of Maharashtra and others** (SLP (Civil) No.9932 of 2004 together with connected matters), allowed a management quota of 75%, we direct the State of Maharashtra at the present stage to fill up 25% of the total seats in the three institutions before the Court. The final distribution of the quota shall abide by the order that may be passed by the Samiti on reconsideration in the light of this judgment.

11. The petitions are accordingly disposed of. In the circumstances of the case, there shall be no order as to costs.

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